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No. 88-1350

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

FREDERICK SMITH, in his individual and official capacity as Principal of the Bradford Area High School; RICHARD MILLER, in his individual and official capacity as assistant principal of the Bradford High School; and FREDERICK SHUEY, in his individual and official capacity as Superintendent of the Bradford Area School District,

Petitioners,

vs.

JUDY GROVE SOWERS,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A. Whether public school administrators who adopt a practice, custom or policy of deliberate indifference to and active concealment of instances of known or suspected sexual abuse of students by their teachers are entitled to qualified immunity where their conduct results in sexual assaults of students by teachers.

B. Whether public school administrators who deliberately fail to supervise, discipline and control a teacher even though they know or are on actual notice that he presents a significant risk of harm to female students are entitled to qualified immunity where their failure to supervise and control the teacher results in sexual assaults of students by the teacher.

C. Whether public school administrators who conspire to conceal from the public instances of known or suspected sexual abuse of students by various teachers are entitled to qualified immunity where their conspiratorial conduct results in sexual assaults of students by teachers.

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STATEMENT OF CASE

a. Procedural posture and relevant facts.

Judy Grove Sowers ("Respondent" or "Sowers") commenced this action pursuant to 42 U.S.C. Section 1983 (1982) in the United States District Court for the Western District of Pennsylvania, Case No. 88-57, against the Bradford Area School District ("School District"), Frederick Smith, the principal of the Bradford Area High School, Richard Miller, the assistant principal, and Frederick Shuey, the superintendent of the School District.[1]

Pursuant to Fed.R.Civ.Pro. 12(b)(6), the defendants moved to dismiss Respondent's complaint on the ground, *inter alia*, of qualified immunity.[2] The district court denied the motion. *Sowers v. Bradford Area School District*, 694 F.Supp. 125, 140 (W.D. Pa. 1988), App. at p.46. The individual defendants ("Petitioners") appealed the district court's decision with respect to qualified immunity to the United States Court of Appeals for the Third Circuit, which affirmed by judgment order, without opinion, on January 31, 1989.

In accordance with Fed.R.Civ.Pro. 12(b)(6), the facts material to the district court's decision and the Third

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[1] The individual defendants were sued in both their individual and official capacities.

[2] The Petitioners also moved to strike portions of certain paragraphs of the complaint on the grounds that these paragraphs "contain[ed] immaterial, impertinent and scandalous matters . . ." Motion to Dismiss and/or Strike, p.2, App. at pp.66-67. The district court denied this motion. *Sowers v. Bradford Area School District*, 694 F.Supp.125, 128 (W.D. Pa. 1988), App. at p.15. Only the issue of qualified immunity was immediately appealable under *Mitchell v. Forsyth*, 472 U.S. 511 (1985).

Circuit's affirmance were derived primarily from the complaint. App. at pp.11-14. In the district court, the Petitioners appended to their motion to dismiss four of several hundred pages of previous deposition testimony of Respondent taken in three related cases.[3] As explained in more detail below,[4] the district court determined that the materials submitted by Petitioners were irrelevant to the issues presented in their motion to dismiss. App. at pp.25-26.

The gravamen of Respondent's complaint was that the School District, acting through Petitioners, adopted a pernicious practice, custom or policy of deliberate indifference to and active concealment of instances of known or suspected sexual abuse of students by teachers; that this practice, custom or policy created a climate which facilitated and encouraged sexual abuse of students by teachers in general; and that this practice, custom or policy specifically resulted in a sexual assault upon Respondent by the Bradford Area High School band director, Edward Wright ("Wright"). App. at pp.10, 11-14.

During his tenure in the School District, Wright had sexually abused or harassed other female students in the district, both prior and subsequent to assaulting Respondent. App. at pp.11-14. The sexual assault upon Respondent occurred on June 16, 1979; however, the acts and omissions of Petitioners that facilitated Wright's misconduct occurred both before the assault

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[3] Accordingly, Respondent filed a motion in the district court requesting that Petitioners' motion to dismiss be treated as one for summary judgment and disposed of as provided in Rule 56. The district court denied this motion.

[4] See *infra* at pp. 3-5.

and thereafter. *Id.* Further, Petitioners were on actual or constructive notice that Wright posed a significant threat to female students at the Bradford Area High School in general and Respondent in particular prior and subsequent to June 16, 1979. App. at p.11.

Count I of the complaint alleged that Petitioners' conduct created a climate wherein child abusers, such as Wright, could prey upon female students with impunity and that this conduct was a proximate cause of a deprivation of Respondent's constitutional right of freedom from sexual abuse. App. at p.10.

Count II alleged that the individual defendants were members of a conspiracy whose purpose was to conceal from the public instances of known or suspected sexual abuse of students by various teachers. The alleged overt acts in furtherance of the conspiracy included, *inter alia*, the co-conspirators' failure to respond appropriately to complaints of sexual abuse and defendant Smith's keeping of a personal, secret file in his desk drawer at home memorializing many of the complaints against teachers. The alleged proximate results of the conspiracy were the same as those under Count I. App. at pp.10-11.

In their brief, Petitioners emphasize two purported facts in support of their contention that no constitutional duty was violated by them or the School District with respect to Wright's assault on Respondent. First, they note that the "single [assault upon Respondent] occurred off of school property, during summer vacation. . . ." Petitioners' Brief at p.11. While it is clearly Petitioners' intention to portray Respondent's visit to Wright's house as a social call unrelated to any school business, the excerpted portion of Respondent's deposition upon which Petitioners

rely flatly contradicts this. Respondent's deposition reveals that she visited Wright's house for the express purpose of obtaining a tape of marching music for the Bradford High School band. Since she was a section leader in the band and was leaving Bradford the following day for two weeks, it was necessary for her to pick up the music on that day so she could learn it in preparation for summer band practice which was to commence upon her return. App. at pp.25, 73.

More importantly, Petitioners' emphasis of the location of the assault ignores the basis of Respondent's complaint. Petitioners' long-standing custom or practice of deliberate indifference to sexual abuse in the School District and their active concealment of known or suspected sexual abuse of students by teachers created a risk to students that did not stop at the boundary line of school premises. As the district court explained, "[t]he increased threat to female students created by the [Petitioners'] alleged tolerance for sexual abuse was not the sort of danger that disappeared when those students packed up their instruments and walked out of the band room." *Sowers v. Bradford Area School District*, 694 F.Supp. at 132, App. at p.25. Petitioners knew that Wright was a threat to students but they nevertheless continued to hold him out to students as the school sanctioned band director. They were also fully cognizant that Wright's band-related duties continued throughout the summer months and that students periodically would come in contact with Wright in conjunction with band-related activities off school premises during the summer months. *Id.* Accordingly, Respondent contends that the location of Wright's assault has no relevance to

whether Petitioners' conduct was such that they can be held accountable for the constitutional violation perpetrated by Wright.

Respondent also submits that the number of assaults upon her is similarly irrelevant. That Petitioners' tolerance and concealment of sexual abuse of students by teachers facilitated a single assault is sufficient at this stage of the proceedings to establish the nexus between their deliberate indifference and active concealment and the deprivation of Respondent's constitutionally protected rights.

Petitioners also contend that the record in the instant case includes "*no evidence* that the School District had notice of any sort prior to the alleged incident that Wright was a threat to any person." Petitioners' Brief at p.11 (emphasis supplied). This contention, which Petitioners raised for the first time on appeal, simply misstates the record. Respondent's complaint alleged, among other things, that Petitioners were on actual or constructive notice that Wright posed a threat to female band members prior to his assault on Respondent. Complaint ¶22, App. at p.53. The motion to dismiss filed by Petitioners in the district court challenged the legal sufficiency of Respondent's complaint asserting that, even accepting her allegations as true, Petitioners owed her no duty and were, therefore, protected by qualified immunity. In an effort to represent this case as an expansion of the scope of Section 1983 liability and exaggerate its consequences, Petitioners have attempted to alter the factual record underlying the district court's decision.[5] Thus, in determining whether to grant

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[5] This alteration of the record is further evidenced by com-

certiorari in this case, the Court must first decide whether it would review the decision of the district court based upon the record below or based upon the record presented in Petitioners' brief.[6]

b. Relationship to *Stoneking v. Bradford Area School District*.

The district court and court of appeals both held that the instant case does not involve facts materially different from those at issue in *Stoneking v. Bradford Area School District*, 856 F.2d 549 (3d Cir. 1988). On March 6, 1989, this Court vacated the judgment in *Stoneking* and remanded the case to the United States Court of Appeals for the Third Circuit for further consideration in light of *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. ___ (1989). *DeShaney* involved claims against a government body based on its inaction in the face of private violence. The instant case involves acts of violence perpetrated by a state actor in accordance with policies, practices and customs of his superiors. Respondent submits that, unlike the claims in *DeShaney*, Respondent's claims against Petitioners and the School District in this case and *Stoneking* rest upon well-established principles of municipal and supervisory liability under 42 U.S.C. Section 1983.

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paring Petitioners' brief at p.24, n.11 with the complaint at ¶¶13-22, App. at pp.51-53.

[6] Petitioners also note that prior to the assault, Respondent had been drinking at her sister's wedding reception. However, they fail to explain what possible significance this fact has on the issue of whether Petitioners' acts and omissions were a moving force behind the violation of her constitutional rights. Certainly, Respondent did not shed her constitutional rights by consuming alcoholic beverages at her sister's wedding reception.

ARGUMENT

a. Summary of Argument.

In *DeShaney v. Winnebago County Department of Social Services*, No. 87-154, slip op. (U.S. Feb. 22, 1989), the Court held that a State's failure to protect an individual against private violence generally does not constitute a violation of the Due Process Clause of the Fourteenth Amendment because the Due Process Clause imposes no duty on the State to provide members of the general public with adequate protective services. Unlike the petitioner's claim in *DeShaney*, however, Respondent's complaint against Petitioners and the School District in this case is not based on a general "affirmative right to government aid." Slip Op. at 6. Rather, the gravamen of Respondent's claim against Petitioners and the School District is three-fold: first, that they affirmatively adopted a practice, custom or policy of deliberate indifference to and active concealment of instances of known or suspected sexual abuse of students by teachers over whom Petitioners exercised supervisory authority; second, that they purposefully and recklessly failed to supervise, control, discipline or discharge Wright when they knew or were on actual notice that he presented a significant threat to Respondent and other female students; and third, that Petitioners conspired to conceal from the public instances of known or suspected sexual abuse of students by various teachers, including Wright. Respondent submits that this conduct proximately resulted in Wright's assault upon her.

Unlike the Department of Social Services in *DeShaney*, Petitioners exercised direct supervisory authority over the perpetrator of the assault, who was

himself a state actor. In this case, Petitioners' own conduct was a catalyst of the violation of Respondent's constitutionally protected right to be free from sexual abuse. By 1979, reasonable school administrators would have understood that they could not engage in affirmative policy-making and conspiratorial action which sanctioned such abuse of students by teachers.

b. *DeShaney v. Winnebago County Department Of Social Services* does not control this case.

DeShaney arose out of a State's failure to intervene and protect a small boy, Joshua DeShaney, who had been beaten and permanently injured by his father, with whom he had lived. Joshua DeShaney's guardian ad litem commenced an action in federal court pursuant to 42 U.S.C. Section 1983 against certain social workers and other local officials who had received complaints that Joshua was being abused by his father, but who nonetheless had not acted to remove the boy from his father's custody. The plaintiff claimed that the defendants' failure to act had deprived Joshua DeShaney of his liberty in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution. The Court rejected this argument, holding that "a state's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause." Slip Op. at 7.

Of the multiple distinctions between *DeShaney* and this case the status of the abuser and the abuser's relationship to the government body is most important. In *DeShaney*, "the State [had] played no part in creating" the danger to Joshua DeShaney. *Id.* No link existed between the defendants and the abuse of Joshua. Joshua had suffered his tragic fate at the

hands of his father, "who was in no sense a state actor." *Id.* at 11 (footnote omitted). However, in the instant case, the abuser was a state actor whose assault of Respondent was facilitated by his status as director of the Bradford Area High School band.

The significance of this distinction is best-illustrated by considering whether the Court would have reached the same result in *DeShaney* if the relationship between the abuser and the supervisory officials had been as it is in this case. In other words, would the defendants in *DeShaney* have been entitled to dismissal of Joshua DeShaney's complaint if they had adopted a custom, practice or policy of tolerating abuse of children by their subordinates and actively conspired to conceal such abuse? Would the Court have affirmed the dismissal of Joshua DeShaney's claim if the perpetrator of his abuse had been a social worker, rather than Joshua's father, and if the Department of Social Services officials had known or been on actual notice that the social worker was a threat to the children she encountered as part of her job but had deliberately disregarded this knowledge and taken no action to control the social worker? Based upon the Court's rationale set forth in the *DeShaney* opinion and earlier decisions of the Court,[7] Respondent believes that the Court would have answered these questions in the negative.

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[7] See *infra* at p. 11.

c. School students have a constitutionally protected liberty interest in being free from sexual abuse by teachers and school officials have a corresponding constitutional duty not to pursue a custom, practice or policy that sanctions deprivations of that interest by teachers.

The liberty interest in being free from physical abuse in school was established no later than 1977, when this Court held in *Ingraham v. Wright* that "corporal punishment in public school implicates a constitutionally protected liberty interest." 430 U.S. 651, 672 (1977). This principle has since been uniformly recognized by the federal courts of appeals that have addressed the issue. *See e.g., Hall v. Tawney*, 621 F.2d 607, 613 (4thCir. 1980); *Garcia v. Miera*, 817 F.2d 650, 656-58 (10th Cir. 1987), *cert. denied*, 108 S.Ct. 1220 (1988).

Both the district court below and the Third Circuit in *Stoneking* held that a student's interest in personal bodily integrity encompasses more than freedom from excessive corporal punishment. The Third Circuit in *Stoneking* noted that "common sense suggests that the right to be free from sexual abuse is at least as fundamental as the right to be free from the less intrusive physical abuse of paddling." *Stoneking*, 856 F.2d at 599.

This conclusion is not genuinely disputed even by Petitioners. Instead, they assert that school administrators do not have a "clearly established" affirmative duty to take steps to protect school children from sexual abuse by a staff member. For this proposition, Petitioners rely principally on *Martinez v. California*, 444 U.S. 277 (1981), where the Court held that members of a parole board were not liable under Section 1983 for damages caused when a convict they

had paroled murdered the plaintiff's decedent. However, *Martinez* does not apply in the instant case because, as in *DeShaney*, the perpetrator of the attack in *Martinez* was a third person unrelated to the defendant government body. In *Martinez*, the Court specifically noted that the parolee was "in no sense an agent of the parole board." *Id.* at 285.

In contrast, Wright was an agent of the School District and, at all relevant times, Petitioners exercised supervisory authority over him. The basis for Respondent's claim against Petitioners is not that they failed to rescue or protect her from a dangerous third person unrelated to the School District. Nor is it Respondent's claim that Petitioners are liable to her under a theory of respondeat superior. Rather, Respondent's position is that Petitioners' tolerance and tacit encouragement of sexual misconduct by teachers in general and knowing disregard of the threat posed by Wright in particular created the danger to Respondent and other students. This is not, as Petitioners contend, a novel or expansive basis for liability under Section 1983.

By 1978, it was well-established that a government body could be liable under Section 1983 for the conduct of a lower echelon employee where the employee acted in accordance with governmental "policy" or "custom." *See Monell v. Department of Social Services*, 436 U.S. 658, 694 (1978). Similarly, in 1976, the Court recognized that government officials charged with supervisory authority could be held liable under Section 1983 where an "affirmative link" existed between the supervisors' own actions and the misconduct of their subordinates. *Rizzo v. Goode*, 423 U.S. 362, 371 (1976). *See also, Kentucky v. Graham*,

473 U.S. 159, 166 (1985) ("[T]o establish personal liability in a Section 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right.").

Numerous federal courts of appeals have held that government officials with supervisory responsibility may not adopt or promote policies that authorize or condone constitutional deprivations by their subordinates. *See e.g., McKinnon v. City of Berwyn*, 750 F.2d 1383, 1391 (7th Cir. 1984) (police supervisor's negligent selection, supervision or failure to discharge subordinates causally related to their wrongdoing is grounds for liability under Section 1983); *McClelland v. Facteau*, 610 F.2d 693, 697 (10th Cir. 1979) (police chiefs have a duty to correct subordinate misconduct of which they have notice); *Sims v. Adams*, 537 F.2d 829, 831-32 (5th Cir. 1976) (complaint stated cause of action against mayor and chief of police for breach of their duties to control police officer's known propensity for improper use of force); *Fiacco v. City of Rensselar*, 783 F.2d 319 (2d Cir. 1986) (deliberate indifference to misconduct of subordinates is a basis for liability under Section 1983), *cert. denied*, 480 U.S. 922 (1987); *Doe v. New York Department of Social Services*, 649 F.2d 134, 144-42 (2d Cir. 1981) (foster care officials' failure to supervise subordinates may demonstrate reckless indifference to the rights of foster children giving rise to Section 1983 liability); *Duchesne v. Sugarman*, 566 F.2d 817, 822 (2d Cir. 1977) ("Where conduct of the supervisory authority is directly related to a denial of a constitutional right, it is not to be distinguished as a matter of causation, upon whether it was action or inaction"); *Williams v.. Smith*, 781 F.2d 319, 323 (2d Cir. 1986) ("A su-

pervisory official may be liable because he or she created a policy or custom under which unconstitutional practices occurred, or allowed such a policy or custom to continue").

The question in this case is whether an affirmative link exists between the conduct, customs and policies of Petitioners and the School District on the one hand and the misconduct of Wright on the other. Petitioners' defense is not that the existence of such an affirmative link would not support liability; it is that they did not sanction, approve or ratify Wright's misconduct. Petitioners' Brief at p.24, n.11. However, this purely factual challenge, which was not raised in the district court, flies in the face of Respondent's complaint.

Moreover, "[t]he issue of authorization, approval or encouragement is generally one of fact, not law." *Turpin v. Mailet*, 619 F.2d 196, 201 (2d Cir.), *cert. denied*, 449 U.S. 1016 (1980). Further, a complaint should not be dismissed unless it "appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). Petitioners' Petition for Writ of Certiorari seeks not a clarification of unsettled law but an adjudication of the facts of this case. Respondent submits that such relief is inappropriate in the United States Supreme Court.

d. Custody or its equivalent is unnecessary where a state actor violates constitutionally protected rights in accordance with state custom, practice or policy or where state officials actively conspire to conceal constitutional violations perpetrated by their subordinates.

Under *DeShaney*, custody of the victim or its equivalent is necessary before the State will be required

as a matter of constitutional law to provide affirmative protection from private violence. This case, however, is not predicated on state inaction, but on affirmative intrusions by a state actor into constitutionally protected rights. State custody has never been required where the constitutional tort is committed by a state actor. Although Petitioners and the School District cannot be held vicariously responsible for Wright's actions under a theory of respondeat superior, they can be held accountable under theories of supervisory and municipal liability. The School District can be held accountable for Wright's misconduct if it was committed pursuant to or in accordance with School District custom or policy. *See Monell v. Department of Social Services, supra*, at p. 11. Petitioners can be liable for Wright's actions if an affirmative link exists between his actions and their own conduct. *See Rizzo v. Goode, supra*, at p.11.

These questions of supervisory and municipal liability are separate and distinct from the issue raised by Petitioners in the district court and in the court of appeals. Petitioners argued that they cannot be liable to Respondent because they had no duty to protect her. While this contention arguably might have been meritorious if Respondent had been assaulted by a third party unrelated to the School District and Petitioners, it misstates the duties of the respective state officials in a case such as this, where the assault was committed by a state actor in accordance with a custom, practice or policy of his superiors. The Due Process Clause imposes a duty on the state and its officers not to intrude on the personal bodily security of individuals. Wright breached this duty when he sexually assaulted Respondent. In turn, the duties of

supervisory officials include a duty not to expressly or tacitly sanction or encourage unconstitutional conduct by their subordinates and a duty not to conspire to conceal unconstitutional conduct by their subordinates. Petitioners breached these duties when they acted as alleged in Respondent's complaint.

e. Petitioners are not entitled to qualified immunity.

Government officials "generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). "The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, ___U.S. ___ , 107 S.Ct. 3034, 3039 (1987). Consistent with this principle, the Third Circuit requires "some but not precise correspondence" with applicable precedents, and demands that "officials apply, well developed legal principles." *Stoneking*, 856 F.2d at 599 (*quoting People of Three Mile Island v. Nuclear Regulatory Commissioners*, 747 F.2d 139, 144 (3d Cir. 1984)). *See also, Prisco v. United States Department of Justice*, 851 F.2d 93, 96-97 (3d Cir. 1988); *Kovats v. Rutgers*, 822 F.2d 1303, 1313 (3d Cir. 1987).

By 1979, the constitutional right of freedom from state intrusions into personal bodily security was clearly established, as were the principles governing supervisory liability and municipal liability based on constitutionally infirm customs and policies.

Among the "historic" liberties protected by the Due Process Clause of the Fourteenth Amendment is "a right to be free from and to obtain judicial relief, for

unjustified intrusions on personal security." *Ingraham v. Wright*, 430 U.S. at 673 (footnote omitted). *Ingraham* was a procedural due process case in which the Court concluded that "corporal punishment in public schools implicates a constitutionally protected liberty interest . . .". *Id.* at 674. *Ingraham* is significant here because it illustrates that the constitutionally protected right of personal bodily security has applied, at least since 1977, in schools as well as jail houses.[8]

By 1979, it was similarly well-established that government officials could not, with impunity, adopt or promote policies that authorize or condone constitutional deprivations by their subordinates.[9] Although originally set forth in cases involving different factual settings, this simple principle was clearly applicable to and understandable by all government officials. As the Court emphasized in *Anderson v. Creighton*, ___U.S. ___, 107 S.Ct. at 3039, it is not the case that "an official action is protected by official immunity unless the very action in question has previously been held unlawful, . . . but it is to say that in light of pre-existing law the unlawfulness must be apparent." By 1979, Petitioners required neither clairvoyance nor the advice of a constitutional scholar to apprise them that their deliberate indifference to and concealment

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[8] However, unlike corporal punishment which "dates back to the colonial period," *Ingraham*, 430 U.S. at 660, and which, when properly administered, may further legitimate educational purposes, sexual abuse at the hands of a state actor is inherently repugnant to an individual's right to be free of state intrusions into realms of bodily security. It is probably safe to say that no pre-deprivation procedural safeguards would be sufficient to allow such conduct.

[9] See *supra* at pp. 11-12.

of sexual abuse of students by teachers were unlawful.

f. This case does not make school administrators guarantors of the safety of students.

Petitioners have repeatedly misstated the record in this case by claiming that "[t]here is no allegation that the sexual contact with Edward Wright was sanctioned, approved or ratified by Smith, Miller and Shuey." Petitioners' Brief at p.24, n.11. Unlike the hypothetical school district and school administrators described in Petitioners' brief, Petitioners were not oblivious to the gross misconduct of Wright and other teachers. The record in this case is that Petitioners knew or were on actual notice that Wright posed a significant threat to female students prior to his assault on Judy Sowers. Complaint at ¶¶9,21-22, App. at pp.53, 55. Both before and after Wright's assault, Petitioners engaged in a pattern of conduct which sanctioned and tacitly encouraged sexual abuse of students by teachers. Complaint ¶¶13-22, 26(a)-(m), 27(a)-(g), App. at pp.51-59. When apprised by Sowers and others of the specific assaults by Wright, the record demonstrates, Petitioners reprimanded, humiliated and intimidated the victims but took no action to control Wright. Complaint at ¶¶13-19, App. at pp.51-52.

Contrary to Petitioners' protests, the decision in this case does not place school districts and their administrators in the position of guarantors of the safety of their students. As stated above, Respondent's complaint against Petitioners and the School District is not that they failed to protect her from a dangerous third person unrelated to the School District. It is that they affirmatively adopted a prac-

tice, custom or policy of deliberate indifference to and active concealment of instances of known or suspected sexual abuse of students by teachers over whom Petitioners exercised supervisory authority; that they recklessly failed to supervise and control Wright when they knew or were on actual notice that he presented a significant threat to Respondent and other female students; and that Petitioners conspired to conceal from the public instances of known and/or suspected abuse of students by various teachers. Holding that such conduct falls within the proscriptions of the Due Process Clause of the Fourteenth Amendment does not place school administrators in the position of guarantors of the safety of students. It merely reaffirms their accountability for such conduct where it results in violations of the constitutionally protected rights of the students who they are intended to serve.

CONCLUSION

WHEREFORE, Respondent prays that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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